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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.       | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------------|------------------|
| 10/715,807   | 11/17/2003  | Kenneth Legunn       |                           | 5190             |
| 7590   | 06/17/2004  |                      |                           |                  |
| Kenneth Legunn<br>430 Manville Road<br>Pleasantville, NY 10570 |             |                      | EXAMINER<br>NGUYEN, SON T |                  |
|  |             |                      | ART UNIT                  | PAPER NUMBER     |
|  |             |                      | 3643                      |                  |

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicant(s)

10/715,807

Applicant(s)

LEGUNN ET AL.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address

## Period of Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 9-14 is/are rejected.
- 7) ☒ Claim(s) 2-8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

*Son T. Nguyen*  
Prim Exm 3643

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1 & 14** are rejected under 35 U.S.C. 102(b) as being anticipated by US 1154627 (herein 627).

For claim 1, 627 discloses a planter 1 comprising: an interior cavity surrounded by a side wall and configured to receive a plant therein, said planter being adapted to be positioned over a structure having a horizontal dimension of predetermined length; and a drainage spout 8,10,16 in fluid communication with said interior cavity, said drainage spout extending outwardly to a drain opening (end of ref. 16) horizontally beyond said side wall, said drainage spout being dimensioned in proportion to the horizontal dimension of the structure such that when said planter is positioned over the structure, any water exiting said drain opening falls outside of the structure.

For claim 14, 627 discloses wherein said drain opening is positioned at a downturned end of said spout to direct the water downwardly (as shown in fig. 2).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 9 & 10** are rejected under 35 U.S.C. 103(a) as being unpatentable over 627 (as above) in view of US 5487517 (herein 517).

For claim 9, 517 teaches a structure 10 for supporting a planter assembly, the structure has a railing and the horizontal dimension is the width of the railing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a structure as described above as taught by 517 in the planter assembly of 627 in order to support the assembly on a structure. The combination of 627 as modified by 517 teaches wherein said planter is adapted to be placed on the railing with said drain opening spaced from the railing in the horizontal direction.

For claim 10, 627 as modified by 517 (emphasis on 627) teaches wherein said drainage spout extends from said side wall at a lower position on said side wall (fig. 2).

5. **Claims 11-13** are rejected under 35 U.S.C. 103(a) as being unpatentable over 627 (as above) in view of US 6269589 (herein 589). 589 teaches a planter made out of plastic, metal or ceramic (col. 4, lines 17-19). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the planter of 627 out of plastic, metal or ceramic as taught by 589, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

***Allowable Subject Matter***

6. **Claims 2-8** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen  
Primary Examiner, GAU 3643  
June 14, 2004